

# Between Doubt and Discretion: Revising the Rules for Prosecuting Spanish Witches

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## ABSTRACT

The prolonged witch hunt in Spanish Navarre from 1608 to 1614 was extraordinary in several respects, ranging from the huge number of persons accused to the unprecedented protagonism of children as accusers. Above all, it marked a decisive turning point in the Inquisition's attitude toward witches. From this point onward, the tribunal not only forsook the persecution of diabolical witchcraft in practice. It also devised explicit rules regarding procedure and evidence to make sure that such trials would not be repeated. This chapter examines this unusual episode, and underlines its significance for the broader study of how the early modern European witch craze came to an end.

*La extendida caza de brujas que tuvo lugar en la Navarra española desde 1608 a 1614 presentaba varias características extraordinarias, entre ellas el elevadísimo número de personas acusadas y el protagonismo sin precedentes de niños entre las filas de los acusadores. Ésta marcó un cambio decisivo en la actitud de la Inquisición hacia la brujería. A partir de este momento, el tribunal dejó de perseguir a la brujería diabólica y formuló un nuevo reglamento relativo al procedimiento y al tipo de pruebas admitidas que asegurara que no se repetirían tales procesos. Este capítulo examina este episodio tan inusual, y subraya su significado para el estudio más amplio de cómo acabó la caza de brujas de la Europa moderna.*

“You should not believe everything in the *Malleus Maleficarum*”.  
Supreme Council of the Inquisition, 27 November 1538<sup>1</sup>

Of all the mysteries waiting to be resolved in the history of early modern European witchcraft – and by mystery I do not mean anything arcane or Davincian, but rather a problem that has yet to find a fully convincing solution – the one that continues to receive most emphasis is how and why the persecution of witches began in the first place.

The equally puzzling question of how and why this persecution came to an end has in comparison received much less attention. This chapter brings to wider notice one of the more intriguing episodes in the decline and fall of the early modern prosecution of witchcraft: the 1610 trials in Spanish Navarre. This prolonged investigation, which has been studied in painstaking detail by the Danish folklorist Gustav Henningsen, culminated in the Spanish Inquisition's definitive decision in 1614 not to prosecute thereafter the crime of diabolical witchcraft<sup>2</sup>. The Navarrese incident is not only relevant to the specific issue of witch hunts, and the way in which their decline was related to shifts in opinion regarding the nature of witchcraft, diabolic intervention in the sphere of natural phenomena, and the like. It also reveals some interesting aspects of the practical functioning of early modern legal institutions – aspects that traditional legal history, with its near exclusive attention to jurisprudence and legal thought, rarely takes into account. The latter will be the focus of this brief chapter, which nevertheless will seek to keep the crucial question of religious and intellectual change in sight.

### THE WITCHES OF NAVARRE

The witch hunt began in the villages of Zugarramurdi and Urdax in the northern reaches of the present-day region of Navarre, Spain, not far from what is now the border with France. In December 1608 a woman who had recently returned from a stay in nearby Labourd, on the French side of the frontier, confessed to having been a member of a coven of witches. She soon began to denounce other villagers as members of the diabolical sect, and before long a dozen or so women admitted their crimes and asked the community for pardon. The subsequent intervention of the Inquisition turned a local affair into a much broader scandal. The investigation by the Holy Office – the other name by which this tribunal was known – turned up horrifying details of at least 20 *aquelarres*, the Basque term for witches' sabbaths. These meetings, which were attended by numerous children as well as adults, were devoted to the standard crimes of witches. These included: using toads to make poisons in cauldrons; attendance at a black mass presided over by the devil in person, who received tokens of the witches' obedience; mass sex, including sodomy and incest; and above all, acts of cannibalism, involving the murder of infants in particular. Dozens of villagers were arrested and tried, and in the end 29 were convicted. Of these, six were sentenced to be burned alive at an *auto da fe* – the Inquisition's distinctive spectacle of public punishment – held in November 1610 in the city of Logroño, where the tribunal had its local headquarters. Most of the others received light sentences in exchange for confessing their guilt.

This ghastly spectacle of exemplary retribution should have been the end of the problem. But it was only the beginning. The Inquisitors originally assigned to the case, Alonso Becerra and Juan de Valle Alvarado, were determined to eradicate diabolic witchcraft in the vicinity. They now planned a broader campaign, in tandem with their superiors

in Madrid, the so-called *Suprema*, or Supreme Council of the Inquisition. The local judges firmly believed in the existence of a huge satanic conspiracy in the north, and even sent an alarmist report directly to king Philip III. The *Suprema* in turn proposed a massive campaign to identify the witches by offering an “Edict of Grace”, that is, an amnesty for all those fully willing to admit membership in the sect. By the summer of 1611 the earlier trickle of witchcraft had become a river. In the end, over 8400 individuals – many of whom were children – confessed to being witches, or were denounced as such. Both its size as well as the high proportion of minors involved made the Navarrese witch craze one of the more anomalous, and certainly the largest, episodes of witchcraft in recorded history.

Stretching the accusatorial net to bring in such a large catch ran into growing opposition. Two foci of resistance proved to be particularly important. The first centered around Antonio Venegas de Figueroa, the bishop of Pamplona. From the beginning he had let known his opposition to the persecution of witches. He was joined by Hernando de Solarte, a Basque-speaking Jesuit from the order’s college in the nearby city of Bilbao. While initially willing to countenance the hunt for witches, Solarte quickly changed his mind, and tried to stem the tide of accusations in the valleys he visited while administering the sacraments to the hoards of peasants who confessed to attending sabbaths and participating in other practices of devil worship. But it was above all the canon lawyer Alonso de Salazar Frías, the third and most recently appointed member of the panel of Inquisitorial judges, whose doubts were to prove instrumental in bringing the witch craze to an end. In May 1611 he began a *visita* or official visitation of the area at the behest of the *Suprema*. While making his way slowly through northern and western Navarre and much of the Basque country, Salazar recorded the confessions of villagers who admitted to being witches. In particular he absolved the great numbers of children who confessed to attending nocturnal sabbaths. In March 1612, after spending almost eight months on the road, and filling some 5600 folios with affidavits, he informed Madrid of his findings. His conclusions were as simple as they were devastating: “I have not found a single proof, not even the slightest indication”, he wrote, “from which to infer that an act of witchcraft has actually taken place”. Rather, he attributed the mass confessions to dreams and illusions on the one hand, and to the coercive pressure of neighbors and kinsmen on the other. Salazar also blamed the epidemic of witch accusations on the suggestive power of outside preachers, and the spread of information about witchcraft as news of the 1610 auto da fe reached the mountain areas. “I have observed that there were neither witches nor bewitched in a village until they were talked and written about”<sup>3</sup>. He recommended that the Inquisition put a halt to prosecutions, and silence any further discussion of witchcraft.

Salazar’s fellow judges were outraged by this insubordination, and urged the *Suprema* to ignore the findings of the visitation. Their junior colleague replied to their objections in a series of five reports, written from September 1613 to the spring of the fol-

lowing year. His pronounced skepticism regarding the possibility of diabolic witchcraft having been committed was seconded by another authoritative voice, that of Pedro de Valencia. One of Spain's leading humanist scholars, Valencia had been asked in early 1611 by the Inquisitor-General to express his opinion of the Logroño trials of 1610. His response was to produce a short treatise which, while couched in cautious language and full of what may well have been deliberately distracting erudition, recommended bringing this embarrassing episode to a swift conclusion by preventing any other trials from taking place<sup>4</sup>. His and Salazar's advice prevailed. On 29 August 1614 the *Suprema* wrote to the Navarrese tribunal and for all intents and purposes ordered it to cease its investigations (see the documentary appendix for excerpts from this letter). It also sent the same orders to other tribunals. Seen in retrospect, the Instructions of 1614 effectively brought Inquisitorial prosecution for the heresy of diabolic witchcraft in Spain to an end.

### MANDATING MODERATION

The absence of crucial sources makes it impossible to reconstruct the precise path by which the Inquisition reached this decision. As is the case with most early modern tribunals, their members' deliberations were not recorded, or even minuted. Neither was much committed to writing regarding the specific arguments used to justify final decisions, even in those (relatively few) legal systems which issued opinions when rendering judgments. In this particular case, several especially important documents are missing. These include the affidavits gathered by Salazar; the entire original trial record was destroyed in 1808 along with all the other papers housed in the local archive of the Inquisition. Enough source material survives, however, to allow us to make a few informed guesses about the diverse factors at work in the all-important decision of 1614. Years of patient archival research by the leading student of the Navarre trials, the Danish folklorist Gustav Henningsen, has led to the assemblage of a rich corpus in both the original Spanish and in English translation which permits the accurate reconstruction of many of the key decisions taken by both local and superior judges. This specific paper trail is the most valuable aid to understanding how the policy directive of 1614 took shape<sup>5</sup>.

The instructions are divided into 32 chapters, and focus closely on questions of legal procedure. The Inquisitors on the scene were enjoined to locate and identify the corpus delicti of anyone whom the witches admitted to killing, and to ascertain if the cause of death was "natural or violent" (c. 1). The same held for all other acts of harm to livestock, fields, fruit trees, and the like (c. 4-5). They were also to establish if the witches actually met and if so, if anyone saw them do so (c. 3 and 8). They were likewise to have local preachers inform the faithful that damage to crops from bad weather, blight, and other misfortunes was not to be automatically attributed to witches (c. 7). Anyone

wishing to revoke earlier confessions and accusations was to be received with *blandura* (gentleness) – a major concession, given that the officially stipulated penalty for “false” confessions was capital punishment (c. 12). Leading questions were not to be asked in interrogations, and judges were to be generous in using their powers of absolution (c. 13-14 and 17). All accusations in course at the time were to be suspended and for the present no decisions were to be made locally without consulting the *Suprema*, unless it was to end proceedings (c. 17-20). Finally, all involved were ordered to keep silent and to adhere to the Inquisition’s traditional policy of secrecy, and not to start nor spread gossip and rumors (c. 31). Not one of the 32 clauses of the Instructions expresses doubts concerning the existence of witchcraft, or the reality of the pact with the devil. Yet it takes little reading between the lines to see that the tribunal was trying to rectify a situation that had gone seriously wrong. References to “the damage that has been done” (c. 29), or to “the difficulty of this matter and the deceits (*engaños*) to which it gives rise” (c. 14) point in the same direction – that a disaster had taken place, and these guidelines were to be the first steps toward correcting it.

Of the many intriguing characteristics of this document, several stand out. The first is its very nature. In its original form, the text was a set of specific instructions addressed to the tribunal that had overseen – and mishandled – what was now viewed as a highly problematic case. Yet by forwarding the instructions on to other tribunals in the form of a *carta acordada* or circular letter, the Holy Office turned them into a policy binding on all the local branches of the Holy Office. “Policy” is the key word here. For the document, while judicial in character, was not jurisprudential. It neither cited legal doctrine nor made formal legal arguments. Rather, it set stricter limits on the type of decisions local officials could make, while making little or no reference to the more general legal issues involved.

If one were to sum up this policy in a word, it would be the need for “discretion”. Discretion was understood here in the classic sense of balanced, self-aware judgment, but also in the sense of more flexible response in a context in which the formal contents of the law – as well as the theological beliefs on which the law was based – suffered no modifications. This point deserves emphasis. The decision effectively to stop prosecuting diabolical witchcraft did not involve any change in doctrine or teaching. In fact, *no mention is made of the decision itself*. Rather, the new instructions focus on tightening up procedures, above all by centralizing decision-making and effectively reducing local autonomy. The most consequential change – opting for future avoidance of persecution of witches – is nowhere stated explicitly as such. Rather, its significance can be gauged only in retrospect.

If the emphasis was on discretion, the motivation was doubt. Here the *Suprema*’s language was quite clear: “this matter of witchcraft is difficult and doubts may arise” (c. 18). But doubts about what? The Inquisition never questioned its right to judge cases involving witchcraft. As far as it was concerned, despite the mixed nature of the crime

and the imprecision of royal legislation, its jurisdiction was never in dispute. (Things were different in much of the rest of Europe, where malefic magic could often be tried only in secular courts, if local legal practice mandated it). Rather, doubt appeared in relation to the tribunal's capacity to make correct decisions. One can only guess at the specific chain of events that led to this quandary. First came the criticisms by local Church authorities and missionaries such as Solarte of the way in which the persecution had been carried out. (Criticism of the Inquisition was hardly unknown in early modern Spain, but it was rarely expressed so directly). Then came the division among the tribunal's own judges, when Salazar broke ranks with his two colleagues while carrying out his visitation. Again, there was nothing new about the lack of unanimity among judges in the field; adjudicating among different points of view was, after all, one of the central Council's main tasks. But the implications of this case of dissension went far beyond standard discrepancies over voting, to touch on fundamental issues of content as well as procedure. Hence the significance of Pedro de Valencia's brief. From an external stance of an *amicus curiae* distant from the scene of the crime, he arrived at the same conclusion as Salazar: that uncertainty involving not just what the witches were purported to be doing, but also how the tribunal could be certain about its ability properly to assess this behavior, went deep enough to justify an attitude of extreme caution, if not outright skepticism.

From an intellectual point of view, there was nothing new here. The Inquisition had long felt – and what is more, openly expressed – doubts regarding the reality of the sabbath, night flight, and other key aspects of the concept of diabolical witchcraft. That such doubts had deep roots in the history of the institution is revealed most clearly by the deliberations of a special committee that met in Granada in 1526 at the behest of the Inquisitor General Alonso de Manrique<sup>6</sup>. Alarmed by recent witch-hunts in (once again) Navarre, Manrique charged the panel of ten theologians and canon lawyers to issue a clear statement on the reality of witch practice. Among the questions to be resolved were:

- do witches really commit the heinous acts attributed to them, or are they deceived into thinking that they commit their crimes?
- in either case, what punishment do they deserve?
- whether the Inquisition has jurisdiction over these acts (that is, do they involve heresy)?
- may witches be sentenced to death solely on the evidence of their confessions, or are other proofs required?

The panel answered the opening and decisive question by opting for the first alternative, but by the narrowest possible margin: six voted in favor, four against. The closeness of this and other votes suggested deep divisions among experts over all these matters, except the issue of jurisdiction, which the members ratified almost unanimously. Not surprisingly, the instructions that were issued following this meeting were moderate

in tone and content. Leniency was urged, and in the case of voluntary confessions the property of suspects was not to be seized (such confiscation was the tribunal's standard operating procedure). Moreover, no arrests were to be made if based solely on the testimony of other suspected witches, and judicial torture was to be used with due caution. Inquisitorial policy hewed closely to this line in the future. The *Suprema* did not authorize the execution of a single witch until the Navarrese auto of 1610, although local Inquisitors in Zaragoza (1535) and Barcelona (1549) burned eight witches without its approval, for which they were severely reprimanded. In short, the real anomaly was not the turn against witch prosecution in 1614. Instead, it was the break in 1610 with the attitude of distance and moderation that had prevailed up to that point.

Thus, while in some ways 1614 represented a turning point, in others respects it signified a return to previous practices which reflected longstanding uncertainties regarding fundamental aspects of witchcraft and its prosecution<sup>7</sup>. Even if these lingering doubts were not resolved intellectually, they were acknowledged to be strong enough to become the leading determinant of judicial behavior. Without ever saying it as such, doubt became the official policy of an institution notorious for lacking it.

The instructions had yet another purpose in that they sought to correct a mistake within a system that did not publicly admit to making mistakes<sup>8</sup>. The Inquisition had of course committed serious errors of perception and procedure before. For example, in Murcia from 1560 to 1571 a vain and overly-ambitious Inquisitor fell for the bait set out by a group of families from the city's elite. Only after he had executed 135 descendants of converted Jews on flimsy charges of crypto-Judaism did the *Suprema* realize that the Holy Office had been manipulated into physically eliminating the rival faction within the municipal government<sup>9</sup>. The mistake made in Navarre appeared to be quite similar. In both cases the Supreme Council had ratified a series of decisions made by zealous local Inquisitors. But unlike the Murcian precedent, in Navarre the 1610 auto da fe did not bring an end to the persecution. Becerra and Valle Alvarado's informing Madrid that potentially thousands of other witches awaited prosecution eventually set off the alarm bells. When reports from local critics and above all the conclusions of Salazar's visitation documented basic violations of procedure – including the crucial influence of extra-judicial coercion, the uncritical acceptance of testimony from minors, and disattention to revocations of earlier depositions – Madrid, after some initial foot dragging, intervened to halt further prosecution. The reference in the opening clause to “past and present mistakes” was as close as it came to admitting its errors. Perhaps the most revealing statement regarding specific responsibilities could be found in sections 26 and 29. These refer to the coercion relatives and neighbors brought to bear on the accused, and to over-zealousness on the part of the commissioners, the local clerical representatives of the Inquisition, who were now enjoined to “moderation and temperance” and warned against committing “excesses”. Predictably enough, neither the lower-level judges nor their superiors faced charges of dereliction of duty. Rather,

correction came in the form of an in-house memorandum, which was not destined for public notice<sup>10</sup>. Making the policy public would have to await the next occasion in which the Inquisition faced the problem of what to do with witches.

## IN THE AFTERMATH

Fresh opportunities for testing the new guidelines did not take long to arise. Beginning around 1618, in the wake of crop failure and other natural disasters, local magistrates in Catalonia in the northeastern corner of Spain began to execute dozens of women as witches. At first both the Inquisition and the *Audiència*, or royal appeals court, proved unable to control the outbreak of accusations. Attempts by the latter to revoke local trials to its jurisdiction proved unsuccessful, as a report it drew up in 1621 admitted. To remedy the situation the *Audiència* suggested that a general pardon be issued to all witch suspects, and that in the future the Inquisition be the sole tribunal empowered to try this offense. The former in particular proved to be controversial, and in 1622 Salazar himself entered the fray by intervening before the Council of Aragon to support the proposal for a pardon. In the end neither measure was enacted, and the persecution died down in the later 1620s. At first sight, there was little difference between the Catalan outbreak and the earlier “plague” of witches in Navarre. Both took place near the northern border, in the Pyrenees mountains, and in both instances the crimes involved fell into royal (and to make matters more complex, seigneurial) as well as Inquisitorial jurisdictions. What was new was the attitude of the Holy Office. From the beginning the Inquisition distinguished itself from local authorities – secular judges in the townships and seigneuries as well as many of the bishops and resident clergy – by its reluctance to charge anyone with witchcraft. In fact, in some cases, it clearly stepped into judicial proceedings under way in order to protect the accused from the harsh punishments then being meted out, much as the *Audiència* tried to do. Thus in 1621, the Barcelona tribunal claimed jurisdiction over a case in which an eighteen-year-old woman from Caldes de Montbui was denounced (under torture) by six elderly women for attending sabbaths. The Inquisitors briefly interrogated her, and then set her free unconditionally. In this and several other cases the Holy Office became involved in a crime that it no longer took seriously, in order to spare suspects from being lynched by their neighbors who did<sup>11</sup>.

One needs to keep in mind that the Spanish Inquisition was not the only contemporary tribunal to decide not to prosecute demonic witchcraft. At roughly the same moment the other major Inquisition – that of Rome, under direct papal jurisdiction – was arriving at the same conclusion<sup>12</sup>. The chronology is far from clear, and the Roman case does not seem to have been motivated by the same sort of reaction to a large-scale judicial failure. Still, by the early 1620s the papal bureaucracy was willing to endorse a major tightening of procedures, directed toward making the prosecution of witches much



more difficult. What was eventually printed in the 1650s as the “Instructions on How to Carry Out Trials against Witches, Magicians and Sorcerers” had taken form around 1623, and was soon sent out to guide local officials on matters of judicial conduct<sup>13</sup>. It was also reproduced in general manuals of Inquisitorial procedure beginning with its inclusion in Italian translation in the 1625 version of Eliseo Masini’s widely read guide to the prosecution of heresy<sup>14</sup>. Whether the Spanish instructions influenced their Roman counterpart is questionable. However, there can be little doubt that Iberian practice constituted an important precedent for the papal Inquisitors, who explicitly alluded to the Spanish tribunal’s leniency when promoting the same policy in their own bailiwick and beyond<sup>15</sup>.

Both sets of instructions reflected and, up to a point, tried to resolve the differing understandings of and approaches to witchcraft within institutions that were reputed to be uniform in theory but which turned out to be markedly diverse in practice. Spain and Italy represented the doctrinally more conservative side of the Catholic handling of illicit magic, that which looked back to the mid-12th-century *Canon episcopi* – the standard and, in retrospect, remarkably enlightened statement of medieval jurisprudence regarding witches – as a guide to understanding and dealing with this problem<sup>16</sup>. It had never completely assimilated the revolutionary concept of diabolic witchcraft that first emerged in the later 14th century and opened the way to mass trials beginning in the 16th century – the infamous “witch craze” of early modern Europe. This meant that southern Europe would be spared the sort of mass witch hunts typically found in the north, including such staunchly Catholic areas as Bavaria until the 1590s, or Würzburg through the 1620s<sup>17</sup>. The Spanish *volte-face* of 1614 was arguably the first, and certainly the most visible, in a series of decisions by large-scale judicial institutions to forgo the persecution of magic in terms of diabolical witchcraft. That it was framed as a mixture of relentless focus on procedural detail, general avoidance of assumption of responsibility, and largely indirect and allusive wording comes as little surprise, given the peculiar circumstances in which it took shape.

## ON BALANCE

During the second half of the 17th century the prosecution of witches had ground to a halt, at least in most of western Europe. What is now the standard explanation of the end of the witch craze attributes it to “judicial skepticism”. According to Brian Levack, the author of the best general survey of the decline of the prosecution of witchcraft, the growth of the modern state brought important legal principles into being. These included “formal restriction on the use of torture, the reversal of convictions upon appeal, and legislation that restricted the right of local courts to try witches under any circumstances”<sup>18</sup>. Taken together, these changes in attitude and behavior on the part of judicial and political elites can be seen as the immediate cause of the shift away from persecut-

ing witches, especially in large numbers. In the meantime, other, deeper changes in the fields of culture, science, and religion contributed to bringing down the curtain on this collective tragedy<sup>19</sup>.

The best-known narrative that brings together these two broad dimensions of the triumph of doubt in relation to witchcraft is Friedrich Spee's *Cautio Criminalis*, originally published anonymously in 1631<sup>20</sup>. Spee (1591-1635) was a German Jesuit with lengthy experience in both teaching moral theology and solving practical pastoral problems. It was in fact while serving as confessor to women condemned as witches that he became convinced of the non-existence of their crime. He wound up crediting witch persecution instead to a lethal combination of popular superstition and the manipulation of common emotions such as fear, hatred, and envy. Yet in his treatise he avoided any head-on challenge to the theory of witchcraft. Spee adopted instead the tactic of focusing on procedural questions such as the validity of confessions extracted by torture or of the denunciations of others by persons who admitted to being practitioners of diabolic magic. Much of his credibility depended on his constantly referring – as did Salazar – to personal, eyewitness experience within a legal process that he relentlessly presented as vitiated by basic flaws regarding proofs of guilt. He framed his call for the reversal of the then-common view of witchcraft – that is, as an “exceptional crime” that required dispensing with traditional legal safeguards – within a rhetorical framework that emphasized simple arguments, appeals to reason and natural law, and humble recognition of the fallibility of human judgment. Read far beyond the central German territories whose deplorable recent history he evoked, Spee's text neatly symbolizes the broader drift toward skepticism within the complex balance of beliefs about witches that had galvanized Europe's spiritual horizons and judicial activity since the 15th century.

Developments within the Spanish Inquisition provide an earlier glimpse of the same experience of change. The 1614 text in this case is worlds apart from Spee's quasi-autobiography. Rather, it reproduces the impersonal point of view typical of the directives of a highly bureaucratic institution. The very existence of these directives suggests how the case of the Navarre witches of 1609-1614 may be interpreted as a significant turning-point in the history of the prosecution of witchcraft. For while this was hardly the first time a tribunal had doubts about the reality of satanic witchcraft and whether it should properly charge individuals for this crime, it does seem to be the first time that an early modern legal system converted such doubts into official policy. The latter step involved an intriguing chain of paradoxes, beginning with the decision on the part of the maximum enforcers of the law *not* to enforce it. Rules requiring the identification and punishment of witches were circumvented long before they were repealed. In this respect they formed part of an expanding contradiction, one in which judges who did not believe in diverse aspects of the crime of witchcraft found one way or another not to prosecute it. Since the law itself was not touched, change was kept to a procedural level. This usually involved expanding possibilities for revoking local decisions, as well as urg-

ing greater “diligence” – that is, close attention to procedure – at all levels of the judicial process<sup>21</sup>. Limiting discussion to matters of procedure and the quality of the evidence adduced meant, moreover, keeping it within the tribunal itself. Confining advice and debate to internal channels of communication effectively protected them from broader scrutiny. This policy without publicity, so to speak, united silence and equity to signify the triumph of both sorts of discretion alluded to at the beginning of this chapter.

That a situation that would eventually prevail throughout western Europe first emerged in Spain may not be all that surprising if one keeps in mind two factors. The first is the strength of a literally conservative theology and jurisprudence which in the end proved visibly reluctant to accept the intellectual innovation involved in identifying traditional magical practices – hitherto understood as popular “superstitions” and “deceits” – with the specific forms of demonic magic that were promulgated by, say, northern European treatises such as the *Malleus maleficarum* of 1486. The other is the Spanish Inquisition’s reputation as one of the most effectively centralized judicial systems in all of Europe, uniquely willing and able to place ever greater constraints on local judicial autonomy as an in-house means of correcting its own mistakes. A final paradox – and one of several which clearly work against the “Black Legend” that envelops this notorious institution – is that only a few years after the turn-around of 1614 the Inquisition actually began to initiate proceedings against persons local communities accused of being witches in order to protect them from other tribunals bent on murdering them.

Future studies will shed more light on the issues raised in this all too brief overview. In regard to Spain in particular, research pending includes closer study of the aftermath of the watershed trials of Navarre. Attention has been drawn to the all important Catalan witch craze beginning in 1618. Witch policy elsewhere also needs to be examined. So does the question of the reception of and reaction to the instructions of 1614 on the part of local tribunals throughout the Spanish Monarchy, including the overseas empire. One of the more fruitful tasks will surely be to combine the two approaches presented separately above – cultural history on the one hand, and the history of law and politics on the other – in order to link the intellectual and legal crisis of credible witness and evidence with the question of the institutional response to failures of forensic judgment.

Part of this path has been cleared. Some time ago Barbara Shapiro’s overview of changing standards of evidence in 17th-century England brought the hitherto parallel histories of law and science to bear upon the question of witchcraft<sup>22</sup>. Since then much work in the history of science has focused on the rising status of a diffuse concept of witness in early modern experimental science, and some of it has looked to debates over witchcraft as a fruitful terrain for reflection. It certainly is clear that numerous early modern natural philosophers showed strong interest in questions of witness, testimony, and evidence. In the case of, say, Francis Bacon this meant bringing together his professional training in law with his deep involvement in issues of epistemology and the sources and

protocols of scientific knowledge<sup>23</sup>. A second line of approach has involved analysis of early modern legal decisions – jurisprudential, institutional, and otherwise – within different court systems. For example, several of the numerous studies of the Salem trials of 1692 – the single best-studied series of prosecutions in witch historiography – have focused on the crucial issue of the type of evidence admitted, along with certain of the other characteristics this trial shares with its equally idiosyncratic counterpart in Spain<sup>24</sup>. Finally, quite a few of the classic theological debates of this period could be profitably revisited with an eye for their relevance to the issues raised by the resolution of the Navarrese witch trials. The endless discussion of beliefs regarding miracles and confessions are two obvious candidates, and many others would lend themselves readily to comparative and cross-denominational analysis<sup>25</sup>. When all is said and done, we would do well to take more careful heed of Marc Bloch's prescient observation that it was no coincidence that the biblical scholar Richard Simon developed the science of scriptural exegesis while rescuing people from accusations of witchcraft<sup>26</sup>. The rampant specialization that is one of the leading hallmarks of professional history today has separated spheres of inquiry that early modern thinkers regarded as invariably linked. Perhaps rethinking the end of witch persecution – quite literally a pan-European and interdisciplinary experience – could serve as a useful means of restoring some of the same spirit of historical breadth.

## NOTES

<sup>1</sup> Cited in *The Salazar Documents: Inquisitor Alonso de Salazar Frías and Others on the Basque Witch Persecution*, ed. and trans. G. Henningsen, Leiden 2004, p. 372.

<sup>2</sup> All specific data regarding these trials derive from Henningsen's fundamental sourcebook (*Salazar Documents* cit.), as well as his earlier *The Witches' Advocate: Basque Witchcraft and the Spanish Inquisition, 1609-1614*, Reno 1980, which efficiently summarizes previous studies by Henry Charles Lea, Julio Caro Baroja, Florencio Idoate, and others. For a slightly different perspective on the same material, see L.A. Homza, "Law and Order in Zugarramurdi", unpublished paper presented to the Renaissance Society of America, 2004. I am deeply indebted to Profs. Homza, Edward Bever, Stuart Clark, and John Tedeschi for their comments on an earlier draft of this text. I also am grateful to Prof. Gustav Henningsen and Koninklijke Brill NV for their kind permission to reproduce passages from the *Salazar Documents* study cited above.

<sup>3</sup> *Salazar Documents* cit., pp. 340-342.

<sup>4</sup> Now available as P. de Valencia, *Obras Completas, VII. Discurso acerca de los cuentos de las brujas*, eds. M.A. Marcos Casquero, H.B. Riesco Alvarez, León 1997.

<sup>5</sup> *Salazar Documents* cit. See also his *Witches' Advocate* cit., pp. 366-386, for more details, including a list of direct precedents for the individual clauses of the Instructions.

<sup>6</sup> For the minutes of this meeting, on which the following brief account is based, see *The Spanish Inquisition, 1478-1614: An Anthology of Sources*, ed. L.A. Homza, Indianapolis 2006, pp. 153-163.

<sup>7</sup> John Tedeschi has made the same point in regard to the Roman Inquisition, and in reference to a wider range of crimes prosecuted. See *The Roman Inquisition and Witchcraft: An Early Seventeenth-Century 'Instruction' on Correct Trial Procedure*, in his *The Prosecution of Heresy: Collected Studies on the Inquisition in Early Modern Italy*, Binghamton NY 1990, pp. 205-227.

- <sup>8</sup> According to Tedeschi, every early modern manual of Roman Inquisitorial procedure emphasizes that since the tribunal's authority was directly delegated by the pope it was considered – in theory, to be sure – incapable of error in the commission of its office. See *The Prosecution of Heresy* cit., pp. 58–59, and his *Inquisitorial Law and the Witch*, in B. Ankarloo, G. Henningsen (eds.), *Early Modern Witchcraft: Centres and Peripheries*, Oxford 1990, pp. 83–119 [90], the best introduction to the legal aspects of the Catholic prosecution of witches.
- <sup>9</sup> This sordid story is recounted in detail in J. Contreras, *Sotos contra Riquelmes. Regidores, inquisidores y criptojudíos*, Madrid 1992.
- <sup>10</sup> Henningsen (*Salazar Documents* cit., pp. 3–6) stresses the lack of openness of the Inquisition's debate over witchcraft, and notes that the only texts regarding the Navarrese trials outsiders had access to were two accounts of the Logroño *auto da fé* printed in January 1611.
- <sup>11</sup> Details in H. Kamen, *The Phoenix and the Flame: Catalonia and the Counter-Reformation*, New Haven 1993, pp. 239–245. I have also consulted Biblioteca Nacional, Madrid/Ms. 2440 (16), which contains a ca. 1620 report on the witch hunt in Catalonia. A passage in this manuscript specifically cites the Navarrese trials as a precedent for *not* accepting the testimony of a witch's accomplices as sufficient evidence.
- <sup>12</sup> For witchcraft prosecution by the other permanent early modern Inquisition, that of Portugal, see F. Bethencourt, *Portugal: A Scrupulous Inquisition*, in B. Ankarloo, G. Henningsen (eds.), *Early Modern European Witchcraft* cit., pp. 403–423.
- <sup>13</sup> See the *Instructio pro formandis processibus, in causis Strigum, Sortilegiorum, & maleficiorum*, Rome 1657. For background, see J. Tedeschi, *The Question of Magic and Witchcraft in Two Unpublished Inquisitorial Manuals of the Seventeenth Century*, in “Proceedings of the American Philosophical Society”, March 1987, 131, pp. 92–111, as well as the Decker lecture cited below.
- <sup>14</sup> E. Masini, *Sacro Arsenal, ovvero prattica dell'ufficio della S. Inquisizione ampliata*, Genoa 1625 [2nd ed.], pt. VII, pp. 175–182.
- <sup>15</sup> As documented in R. Decker, *Nascita e diffusione dell'istruttoria processuale della curia romana contro le streghe* [trans. Marta Zaccagnini] in *Symposium della Università di Frankfurt “Die römischen Kongregationen von Inquisition und Index und die Wissenskulturen der Neuzeit”*, 18 May 2000, at <http://www.bid-owl.de/rdecker/Homepage/instructio.html>, and printed as *Entstehung und Verbreitung der römische Hexenprozessinstruktion*, in H. Wolf (ed.), *Inquisition, Index, Zensur...*, Paderborn 2001, pp. 159–75. Decker believes that the Roman *Instructio* may have been written as early as the 1590s. Meanwhile, Carlo Ginzburg (citing Henry Charles Lea) remarked the affinity between the two sets of instructions in his *I benandanti: Stregoneria e culti agrari tra Cinquecento e Seicento*, Turin 1972, p. 178.
- <sup>16</sup> For the text of this all-important statement of medieval understanding of sorcery, which dismisses it as a pagan illusion and “false opinion” bereft of reality, see *Witchcraft in Europe 1100–1700: A Documentary History*, eds. and trans. A.C. Kors, E. Peters, Philadelphia 1992, pp. 28–31.
- <sup>17</sup> See W. Behringer, *Witchcraft Persecutions in Bavaria: Popular Magic, Religious Zealotry and Reason of State in Early Modern Europe*, trans. J.C. Grayson, D. Lederer, Cambridge 1997 [orig. ed. 1987], L. Roper, *Witch Craze: Terror and Fantasy in Baroque Germany*, New Haven 2004, esp. pp. 23–32.
- <sup>18</sup> B. Levack, *The Decline and End of Witchcraft Prosecutions*, in B. Ankarloo, S. Clark (eds.), *Witchcraft and Magic in Europe: The Eighteenth and Nineteenth Centuries*, Philadelphia 1999, pp. 1–94 [88].
- <sup>19</sup> The classic study attributing the end of witch hunts to a “mental revolution” in jurisprudence as well as science, medicine, and theology is R. Mandrou, *Magistrats et sorciers en France au XVII<sup>e</sup> siècle: Une analyse de psychologie historique*, Paris 1968, 3 vols. See “Select Bibliography” below for Alfred Soman's systematic critique of this thesis, and for more recent works that stress the role of political and psycho-cultural factors (under Bostridge and Bever).

- <sup>20</sup> F. Spee von Langenfeld, *Cautio Criminalis, or a Book on Witch Trials*, ed. and trans. M. Hellyer, Charlottesville 2003.
- <sup>21</sup> The Spanish *Suprema's* arrogation of sentencing in all cases involving witchcraft wound up anticipating the same (but much better known) move by the Parlement of Paris as studied by Mandrou in *Magistrats et sorciers* cit.
- <sup>22</sup> B.J. Shapiro, *Probability and Certainty in Seventeenth-Century England: A Study of the Relationships Between Natural Science, Religion, History, Law and Literature*, Princeton 1983, pp. 194-226.
- <sup>23</sup> See Daston and Park in "Select Bibliography" below. For a broader overview of the role of witness in the rise of modern science, see G. Pomata, 'Observatio' ovvero 'historia': Note su empirismo e storia in età moderna, in "Quaderni Storici", April 1996, 91, pp. 173-198, and in general the work of Steven Shapin, above all his *A Social History of Truth: Civility and the Making of Scientific Knowledge in Seventeenth-Century England*, Chicago 1994.
- <sup>24</sup> There is still considerable disagreement about how to judge the different types of evidence presented in Salem. On this see, for example, the Payne and Craker works listed in "Select Bibliography". Other features that the Massachusetts and Navarrese trials shared in common was the prominent role children played as accusers, the use of the legal tactic of allowing those confessing to being witches (and naming their accomplices) to avoid capital punishment, and the presence of the same vexing question of whether the persons whom confessed witches identified as attending sabbaths were real or imaginary ("simulacra"). For the best recent overview of the New England trials, see M.B. Norton, *In the Devil's Snare: The Salem Witchcraft Crisis of 1692*, New York 2002.
- <sup>25</sup> Stuart Clark examines miracles in relation to witchcraft in his remarkable *Thinking with Demons: The Idea of Witchcraft in Early Modern Europe*, Oxford 1997, as well as in *Vanities of the Eye: Vision in Early Modern European Culture*, Oxford 2007. For early modern disputes over confession, especially in regard to its evidentiary role in the prosecution of witches, see T. Robisheaux, 'The Queen of Evidence': The Witchcraft Confession in the Age of Confessionalism, in J.M. Headley, H.J. Hillerbrand, A.J. Papalas (eds.), *Confessionalization in Europe, 1555-1700: Essays in Honor and Memory of Bodo Nischan*, Aldershot 2004, pp. 175-205.
- <sup>26</sup> M. Bloch, *The Historian's Craft*, trans. P. Putnam and intro. J.R. Strayer, New York 1953, p. 136.

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## SOURCE

Excerpts from the 1614 Instructions regarding the Present and Future Prosecution of Witches

In 1614 the Supreme Council of the Spanish Inquisition sent the following letter to its officials in the tribunal of Navarre and elsewhere outlining the procedures to be followed in future trials of witchcraft. The excerpts provided below focus closely on matters of procedure, and their aim is clear: to make the requirements for investigating and convicting witches stringent enough to make such trials virtually impossible. The reasons behind this change in policy – which actually confirmed the Spanish Inquisition's longstanding tradition of avoiding harsh punishment of witches – are examined in the main body of this chapter.

*Para... prevención en lo futuro y reparo en lo pasado y presente... se os envían los artículos y capítulos siguientes...*

*1. Que los inquisidores en las causas que de aquí adelante se ofrecieren de esta materia inquieren y se informen si las muertes de criaturas y personas que las brujas confiesan haber muerto sucedieron en aquellos días o noches que ellas dicen, o si estaban enfermas antes, o si hubo algún accidente o causa para que muriesen natural o violentamente...*

*3. Item, que procuren saber si estas van realmente a sus prados y juntas a hacer los daños que dicen ellas, y quién les llama, y si alguno que no sea de ellos, las viese de noche o de día en sus juntas o haciendo algún maleficio.*

*7. Item, que los inquisidores adviertan a los predicadores por sí o por medio de los comisarios que den a entender que el perderse los panes y otros daños que vienen en los frutos, envía Dios por nuestros pecados, o por la disposición del tiempo, como acontece en otras muchas partes que no hay sospecha de brujas, y es grande inconveniente que tengan imaginación que estas cosas y otras enfermedades y sucesos que comúnmente suceden en aquella tierra los hagan solamente las brujas.*

*11. Item, que estén advertidos si algunas de las cosas que confesaren o testificaren de esta secta, se pueden comprobar con otras personas fuera de los cómplices...*

*18. Item, porque esta causa de brujería tiene dificultad y pueden ocurrir algunas dudas, es necesario que las cosas de esta calidad, los inquisidores todos juntos, ordenen las diligencias que se hubieren de hacer y den sus pareceres cuando las hayan de remitir al Consejo...*

19. Item, *que todas las testificaciones y probanzas, que de estas causas hubieren resultado, se suspendan para que, no habiendo novedad, no se pueda proceder contra ninguno por las testificaciones...*

31. Item, *por los inconvenientes que se han visto de las comunicaciones y conferencias, dividiéndose en parcialidad de opiniones y haciendo diligencias particulares para verificar lo que cada uno sentía, se ponga silencio en estas conferencias, mandándolo así a los dichos comisarios y confesores...*

... To avoid... confusion in the future, and to remedy past and present mistakes, we... are sending you the following articles and paragraphs.

1. Henceforth, when cases concerning this question arise, the inquisitors shall make inquiries and find out whether the deaths of children and persons whom the witches confess to have killed, really took place on the days or nights they indicate; whether the persons in question were already sick or had suffered an accident, or whether there was some other reason for death to have come about through natural or violent causes...

3. Likewise, [the inquisitors] shall endeavor to learn whether these women really go to the meadows and gatherings to cause the crimes to which they later confess; who summons them; and if anyone who is not one of their number has seen them during the day or night at their gatherings or engaged in any evil art...

7. Likewise, the inquisitors themselves or through the commissioners, shall advise preachers to make it plain that the loss of harvests and other misfortunes which befall crops are sent by God on account of our sins and occur because of the weather, as happens in many other districts where there is no suspicion of witchcraft, and that it is most undesirable for people to imagine that these phenomena, together with other disasters and mishaps which commonly occur in these regions, are caused only by witches...

11. Likewise, [the inquisitors] are to observe in particular whether any detail can be proved through the testimony of other persons who are not themselves witches...

18. Likewise, because witchcraft is a difficult matter and can lead to confusion, it is necessary that in questions of this nature all the inquisitors decide the sort of investigations to be carried out, and, all together, submit their votes when the case has to be sent on to the Council...

19. Likewise, all the testimonies and proofs resulting from these cases shall be suspended forthwith so that, in the absence of new evidence, no proceedings can be brought against anybody on the strength of the original testimonies...

31. Likewise, an absolute silence is to be imposed in view of the undesirable consequences of the public discussion of these matters which have divided people into factions and led to each man carrying out private investigations to confirm his own opinion. Let this be made very clear to the commissioners and the confessors...

Madrid, 29 August 1614

From: *The Salazar Documents: Inquisitor Alonso de Salazar Frías and Others on the Basque Witch Persecution*, ed. and trans. Gustav Henningsen, Leiden 2004, pp. 472-488.